EXHIBIT A

Cbeyond Communications, LLC takes exception to the following items in the Administrative Law Judge's March 15, 2010 Proposed Order in Docket No. 08-0188 (the "Proposed Order"):

Page 5 and Page 6 of the Proposed Order:

Cbeyond summarizes its position as follows: Cbeyond is disputing charges for facilities it does not request and AT&T does not provide. Specifically, there are two scenarios at issues here. Both involve, at first, an EEL consisting of a UNE Loop and transport. In the first example, the transport portion of the EEL is a DS1. The problem arises when Cbeyond cancels the DS1 transport portion of the EEL and aggregates a bunch of DS1 transport UNEs into one DS3 transport UNE. In this scenario, Cbeyond asserts that the UNE loop portion of the EEL does not change but AT&T charges for disconnecting and reconnecting the UNE loop solely because it is connected to the UNE transport being disconnected. Cbeyond asserts that it should only be charged for changing the transport portion of the EEL and there should be no charge for the UNE loop because that remains unchanged. Cbeyond also argues that it is in violation of the ICA and federal law for AT&T to condition disconnection of the UNE transport on disconnection of the UNE loop.

The second scenario also starts with an EEL consisting of a UNE loop and transport. Here, though, Cbeyond merely cancels the transport portion of the EEL because it intends to either go through another CLEC or self-provision the transport solely because it is connected to the UNE transport being disconnected. Again, Cbeyond states that no charge should be assessed for the loop because it remains unchanged. Cbeyond also argues that it is in violation of the ICA and federal law for AT&T to condition disconnection of the UNE transport on disconnection of the UNE loop. AT&T however charges for disconnecting and reconnecting the UNE loop even though its request pertain solely to the UNE transport. It is clear that to Cbeyond that the loop does not change because the orders it places say that the loops should not be disconnected, the circuit IDs do not change and also a note is included that there is no need to test the loop because it is not changing.

Apparently for internal system reasons, AT&T requires Cbeyond to submit an order to disconnect the entire circuit, including the UNE loop and the UNE transport, with a note that says, "do not disconnect the loop." ...

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In the second scenario, Cbeyond simply disconnects the transport with AT&T, keeps the loop, and provides AT&T the Carrier Facility Assignment ("CFA") for cross-connecting the existing loop to the new third-party CLEC's collocation or Cbeyond's collocation. The third-party CLEC then provides Cbeyond the transport – essentially replacing the transport previously provided by AT&T -- or, where Cbeyond is collocated, Cbeyond carries the traffic to its own network without transport. Again, for apparently internal process reasons, AT&T insists that Cbeyond submit a disconnect order for the ~~circuit~~ entire circuit, including the UNE loop and the UNE transport, with a notation to not disconnect the loop. AT&T then bills Cbeyond for an entirely new loop. ...

Page 7 of the Proposed Order:

Cbeyond argues that the interconnection agreement contains a price for the disconnection of UNE transport, and that these prices ($8.63 service order charge and a $12.35 disconnection charge) is controlling; not the price to disconnect and then reconnect the entire EEL ($8.63 service order charge and $17.20 disconnection charge), and then $280.64 to provision a new EEL. Cbeyond notes that the Commission has addressed the requirements for EELs or other UNE combinations in several orders since 1996, including the *Globalcom Order*. *See Globalcom, Inc. v. Illinois Bell Telephone Company (Ameritech Illinois)*, Docket 02-0365, Order, October 23, 2002 ("*Globalcom Order*") (*rev'd in part*, 347 Ill. App. 3d 592 (1st Dist. 2004). ...

Page 26 of the Proposed Order:

With respect to TA96, Cbeyond argues that the ICA codifies the legal obligations of the parties under that law and governs the interpretation of the ICA~~.~~, and that the Commission must uses TA96 and the EEL docket to interpret the interconnection agreement. Cbeyond notes and disagrees with AT&T's argument that the ICA preempts all state and federal rules and laws. Cbeyond argues that to the extent that the Commission is required to interpret ambiguities in the ICA, it must do so in conformity with the federal and state law. Here, Cbeyond believes the Commission is presented with two opposing contract interpretations of what an "appropriate service request" means and what the TRRO Amendment means. Because the interpretation offered by AT&T and Staff creates an illegal UNE tying arrangement and violates TELRIC, the law compels the interpretation proposed by Cbeyond.

Cbeyond asserts that the ICA contains specific terms for ordering and EEL and the subparts of EELs, and asserts that there are rates for ordering and disconnecting the separate unbundled network elements ~~changing the transport portion of an EEL.~~ Cbeyond cites to the specific lines in Amendment 1, Attachment A to the ICA ....

Page 27 of the Proposed Order:

Third, Cbeyond disagrees with Staff's interpretation of the CCC charge. Cbeyond points out that prior to it ordering the transport circuit between its collocation in a distant end office and the main distribution frame (or its equivalent) in the service wire center, no circuit between these two points existed. Cbeyond states that it and AT&T are in agreement that Cbeyond always orders CCC at the time it first orders a DS1 circuit. Therefore, Cbeyond argues, a CCC charge only applies after there is a separate provision of the transport facility and no CCC charges should ever be assessed against Cbeyond for rearrangements.

Page 28 through Page 35 of the Proposed Order:

IX. COMMISSION ANALYSIS AND CONCLUSION

This case is about charges by AT&T under the terms of the parties' ICA for canceling a UNE (here transport) which is combined with other UNEs. ~~As is so often the case, this complaint is about money and nothing else. There is no allegation and no evidence that AT&T is~~

~~refusing to provide service or that AT&T is providing substandard service to Cbeyond. The only question is how much Cbeyond should pay for the service it orders, and receives, from AT&T.~~

Under the relevant portions of the ICA, Cbeyond has the option to order individual UNEs: DS1 loop, DS1 UDT and DS3 UDT. Both parties agree that two ICA provisions govern this case: Article 9 of the ICA and Section 6 of the TRO/TRRO Amendment to the ICA. Article 9, section 9.3.3.4 provides that Cbeyond "shall issue appropriate service requests" to obtain UNE combinations and section 6.1 of the TRO/TRRO Amendment to the ICA provides that Cbeyond shall have access to UNE combinations provided "the rates, terms and conditions under which such Section 251 UNEs are to be provided included within the CLEC's underlying Agreement." The ICA also provides that Cbeyond It may ~~also~~ purchase UNEs in combination: a DS1 loop in combination with DS1 UDT (DS1/DS1 EEL) and DS1 loops in combination with DS3 UDT (DS1/DS3 EEL). ~~The UNEs and UNE combinations represent five different offerings or products available under the ICA.~~ The underlying components of the EEL - loops and transport - are UNEs, but the EELs themselves are not UNEs but are a combination of two or more UNEs. The issue here is what charges are appropriate under the parties' ICA when Cbeyond cancels the transport UNE portion of an EEL to instead use a stand-alone DS1 loop or to use DS3 transport. ~~a DS1/DS1 EEL and either orders a DS1/DS3 EEL or a stand-alone DS1 loop.~~ Cbeyond refers to these two scenarios as rearrangements.

Although Cbeyond alleges various violations of state and federal law, the Commission finds that this matter is controlled by the ICA, but finds that an evidentiary hearing is required. ~~and no further evidentiary inquiry is required.~~ Our review of the record, which consists of the parties' pleadings and the Joint Stipulation, shows that ~~AT&T has provided Cbeyond with EELs and EEL rearrangements according to the rates and the terms of the ICA.~~, as a matter of law and under the parties' ICA, EELs are not single UNEs, EELs are two or more UNEs which AT&T must provide separately or in combination. However, there is a disputed issue of material fact as to which terms in the ICA agreement control disconnection and provisioning of UNE transports in an EEL, and no determination has been made as to the parties' dispute on the proper application of Clear Channel Capability rate. Therefore, the Commission remands this matter for an evidentiary hearing.

A. State Law

This Complaint is controlled by the terms of ICA. No evidence or argument has been made that the ICA was not adopted consistent with federal law or with the Commission's findings in Docket 02-0864 relating to Total Element Long Run Incremental Costs ("TELRIC") pricing. Although Cbeyond argues that the rates charged by AT&T in this case are inconsistent with Docket 02-0864, AT&T has not addressed this issue in its pleadings and the record before the Court does not include testimony or an evidentiary record on this point.

State and federal law governs the interpretation of the ICA, and the Commission reviews the terms of all ICAs for compliance with section 251 of the Act (47 U.S.C. §251 et seq.) (the "Act"). In addition, the Commission finds that the Act does not preclude the Commission from finding that state law may impose additional obligations on the parties to an ICA if the ICA does not address the issue. *See Wisconsin Bell, Inc. v. Bie*, 340 F.3d 411, 444-45 (7th Cir. 2003).

Cbeyond's Complaint was brought pursuant to Section 13-515 however the parties agreed to an extended schedule in this matter after unsuccessful mediation. AT&T's Motion To Dismiss was denied but an evidentiary hearing in this matter has not occurred.

~~A further review of the statutory provisions relied on by the Complainant affirms this decision.~~ The Complaint invokes Section 13-514 generally and also the following subsections of Section 13-514:

(1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier

(2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers

(8) violating the terms of or unreasonably delaying implementation of interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers

(10) unreasonably failing to offer network elements that the Commission or the Federal Communications Commission has determined must be offered on an unbundled basis to another telecommunications carrier in a manner consistent with the Commission's or Federal Communications Commission's orders or rules requiring such offerings

(11) violating the obligations of Section 13-801

(12) violating an order of the Commission regarding matters between telecommunications carriers

~~Before addressing the individual sections of the Act, we note~~ The Commission finds that for several of the statutory provisions raised by Cbeyond's Complaint the record before the ALJ is incomplete. Cbeyond's Complaint raises numerous state law issues which survived an AT&T Motion To Dismiss. However, the parties have not submitted evidence in a hearing on these matters. Therefore the Commission remands this matter for an evidentiary hearing. ~~its treatment is cursory. It is not sufficient, especially in a 13-514 proceeding, to merely state that AT&T has violated a statutory section without providing any further argument or evidentiary support. For instance, Cbeyond has not provided any support for its claim of violations of Section 13-514 (1) and (2) and the Commission cannot and, indeed, should not attempt to create one.~~

~~Similarly, with respect to Section 13-514(6), Cbeyond claims that AT&T's actions have had an adverse effect on the ability of other carriers to provide transport services to Cbeyond. Other than this bald statement, no other support for this assertion has been provided. Cbeyond also does not argue that it has been unable provide service to its customers. Indeed, it has been shown that AT&T has provided all the services requested by Cbeyond and has not yet been paid. Thus, there is no support for Cbeyond's claim under Section 13-514(6).~~

~~Section 13-514(8) involves violations of the parties' ICA. If Cbeyond had actually shown that AT&T violated the ICA it might have had a claim under this section. As discussed below, however, Cbeyond has not shown that AT&T has violated the parties' ICA.~~

~~With respect to 13-514(10), Cbeyond invokes the FCC regulations that relate to unbundled dedicated transport ("UDT") and alleges that AT&T is in violation because it charges for the disconnection and reconnection of the loop portion of an DS1/DS1 EEL when Cbeyond~~

~~wishes to just change the transport. The problem is that Cbeyond is not ordering UDT, but rather it is ordering UDT in combination with a loop – an EEL. Moreover, it is not even an EEL that is at issue, but rather the rearranging of the DS1/DS1 EEL. Hence, the FCC regulations regarding UDT do not apply. The only question is what charges should apply when Cbeyond cancels a DS1/DS1 EEL and either orders a DS1/DS3 EEL or a stand-alone EEL. Cbeyond has not shown AT&T to be in violation of any federal or state regulations as required for a finding under 13-514(10) nor has Cbeyond brought any rules to the Commission's attention regarding EEL rearrangements.~~

~~Although Cbeyond attempts to argue that AT&T has violated the Commission's Order in Docket 02-0864, which could be a violation of Section 13-514(12), the argument fails. This case involves the "rearranging" of EELs, a product or service not contemplated in that proceeding. We also are reassured in the accuracy of this decision because of Staff's careful analysis, wherein Staff reached the conclusion that AT&T has not violated the Commission's Order in Docket 02-0864.~~

~~Cbeyond also points to Section 5/13-515 of the Act, which contains the procedures to be used to enforce the provisions of Section 13-514. The parties have waived the deadlines contained in 13-515 and the various other procedural requirements, but the Commission's costs will be assessed pursuant to this Section. AT&T, however, cannot be said to have violated Section 13-515 for its actions relating to EELs because 13-515 is a procedural statute that attaches to 13-514.~~

~~Cbeyond further requests that AT&T be found in violation of 13-801(b). In its Complaint, Cbeyond asserts that AT&T violated Section 13-801(b)(1)(C), which requires proof that AT&T discriminated against Cbeyond in favor of some other party. Cbeyond has not presented any such proof or even argument. In the body of its Initial Brief, Cbeyond also states that Section 13-801 "mirrors federal obligation" Cbeyond I.B. at 13. Accordingly, the Commission will address those federal obligations below.~~

~~Section 9-250, which was also cited by Cbeyond, gives the Commission power to impose new rates after it has determined that the rates charged by a utility are unjust, etc. We make no such determination here. We also note that this is another instance where Cbeyond cites a statutory section with no further argument or support.~~

~~Although AT&T makes a compelling argument regarding the inapplicability of state statutory proceedings to complaints where there is an executed and approved interconnection agreement, it is not necessary to make a decision regarding this legal issue because Cbeyond has failed to make a showing to support a finding in its favor on any of the state statutory sections that it relies.~~

B. Federal Law and the ICA

The parties in this action agree that two ICA provisions are central to this case: Article 9 of the ICA and Section 6 of the TRO/TRRO Amendment to the ICA. Article 9, section 9.3.3.4 provides that Cbeyond "shall issue appropriate service requests" to obtain UNE combinations. Section 6.1 of the TRO/TRRO Amendment to the ICA provides that Cbeyond shall have access to UNE combinations provided "the rates, terms and conditions under which such Section 251 UNEs are to be provided included within the CLEC's underlying Agreement." ~~There is a Commission approved ICA between the parties that covers the two scenarios at issue here and, not surprisingly requires large payments due AT&T from Cbeyond. Because the ICA includes~~

~~rates, terms and conditions to accomplish what Cbeyond wants, but not at the price it wants, the Commission must deny the Complaint.~~

However, the parties disagree as to whether the ICA contains specific rates for the two scenarios at issue. Cbeyond argues in its Reply Brief, and the Commission recognizes, that Amendment 1, Attachment A of the ICA contains distinct charges for the UNE DS1 transport portion of an EEL and the whole DS1/DS1 EEL, and that the UNE transport charges should apply:

Ordering Charges:

- EEL: At line 156 – the service order charge ($8.63) for disconnection of a whole DS1/DS1 EEL (part of the NRCs specific to service ordering charges for the whole DS1 EEL at lines 153-159); and
- UNE Transport in an EEL: At line 132, there is a Service Order Charge ($8.63) for disconnecting the transport portion of a DS1 EEL (also part of the NRCs specific to service ordering charges for the transport portion of a DS1 EEL at lines 129-135);

Disconnection Provisioning Charges:

- EEL: At line 207, there is a Disconnection Provisioning Charge ($17.20) for disconnecting the whole DS1/DS1 EEL (also part of the NRCs specific to provisioning a DS1 EEL at lines 205-207); and
- UNE Transport in an EEL: At line 194, there is a Disconnection Provisioning Charge ($12.35) for disconnecting the transport portion of DS1 EEL (also part of the NRCs specific to provisioning the transport portion of a DS1 EEL at lines 192-194);

Provisioning Charges:

- EEL: At line 205-210, there is a Provisioning Charge ($280.64) for the whole DS1/DS1 EEL; and
- UNE Transport in an EEL: At line 192-197, there is a Provisioning Charge ($95.69) for the DS1 transport portion of an EEL.

AT&T argues that Cbeyond varies between asserting that the ICA does not contain prices for rearrangements to asserting that for the rearrangements it should only be charged the price for disconnecting the transport portion of the EEL. Similarly, Staff takes the position that the Third Amendment to the ICA, the TRO/TRRO Amendment, lists the products available to Cbeyond. ~~Among others, there are sections~~ which include, among others, sections for DS1 loops, DS1 transport, DS3 transport and sections for DS1 EELs and DS3 EELs. Staff contends that these are separate and distinct products with separate and distinct rates.

The Commission finds that the record is insufficiently developed to determine what an "appropriate service order" is under the terms of the ICA. AT&T and Staff's arguments appear based solely on the absence of a line in the TRO/TRRO Amendment named "rearrangement," the term used by Cbeyond. Thus, according to AT&T and Staff, because there is no line called "rearrangement," AT&T gets to independently chose to apply disconnection and provisioning charges to the entire EEL, including the transport charge for the EEL and an additional loop

charge not shown above, all while ignoring the disconnect and provisioning charges for UNE transport in an EEL contained in the ICA. Cbeyond argues that the "appropriate service order" under the ICA is the disconnection and provisioning of the UNE transport for an EEL and that it is impermissible under the terms of the ICA and federal law to condition ordering, provisioning and disconnection of UNE transport on ordering, provisioning and disconnection of UNE loops. Consequently, to resolve this Complaint the Commission was determine which ICA provisions apply to the service requested by Cbeyond and which rate elements apply.

~~The Commission sees Cbeyond to vary between asserting that the ICA does not contain prices for rearrangements to asserting that for the rearrangements it should only be charged the price for disconnecting the transport portion of the EEL. We agree with AT&T that these two positions are inherently conflicted and find that the ICA does not contain a price specific to rearrangements.~~

~~The Commission reads the ICA in the same manner as Staff. Specifically, the Third Amendment to the ICA, the TRO/TRRO Amendment, lists the products available to Cbeyond. Among others, there are sections for DS1 loops, DS1 transport, DS3 transport and sections for DS1 EELs and DS3 EELs. These are separate and distinct products with separate and distinct rates. The charges are different when a stand-alone UNE loop is involved versus when a UNE loop is ordered as part of an EEL.~~

~~Moreover, the price, when added together, of a UNE loop and UDT is higher than when ordered as part of an EEL. Naturally, Cbeyond wants the lower price. Cbeyond orders the EEL because it is cheaper to connect, but then does not want to pay to disconnect it. Cbeyond may be correct that the cost to "rearrange" from one type of EEL to another is cheaper than disconnecting the EEL and then connecting the new EEL. The problem is that, like AT&T and Staff argue, the two step process is the only way to "rearrange" an EEL pursuant to the ICA.~~

In the Third Amendment to the parties' ICA, it states that "the Parties wish to amend the Agreement in order to give contractual effect to the effective portions of the *TRO*, *TRO* Reconsideration Orders, and *TRO* Remand as set forth herein." Third Amendment, 6th whereas paragraph. The Commission disagrees with AT&T that because the parties have an ICA that "gives contractual effect" to the FCC's relevant orders, federal law does not apply to AT&T's relationship with Cbeyond incorporating the FCC command that AT&T must combine or separate the UNEs that make an EEL upon request pursuant to the nondiscrimination requirement of section 251(c)(3) [47 U.S.C. §251(c)(3)]" *Triennial Review Order (TRO)*, 18 FCC Rcd. 16978, ¶573 (Sept. 17, 2003). As noted above Section 6.1 of the TRO/TRRO Amendment to the ICA expressly states that Cbeyond shall have access to UNE combinations provided "the rates, terms and conditions under which such Section 251 UNEs are to be provided included within the CLEC's underlying Agreement." And, 47 C.F.R. §51.307(d) interprets Section 251(c)(3) of the Act to mean "that incumbent LECs must provide the facility or functionality of a particular element to requesting carriers, separate from the facility or functionality of other elements, for a separate fee." First Report and Order, *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, et al.*, CC Docket No. 96-98 (F.C.C. Aug. 8, 1996). ~~it would be difficult to find in Cbeyond's favor solely on the basis of the FCC's order. Even if the ICA didn't control, however, the FCC's orders don't help Cbeyond's case.~~

Cbeyond quotes various sections of the FCC's *TRO*, notably paragraphs 576 and 587. These paragraphs state, in whole, that:

> 576. Based on the record before us, we conclude that EELs facilitate the growth of facilities-based competition in the local market. The availability of EELs extends the geographic reach for competitive LECs because EELs enable requesting carriers to serve customers by extending a customer's loop from the end office serving that customer to a different end office in which the competitive LEC is already located. In this way, EELs also allow competitive LECs to reduce their collocation costs by aggregating loops at fewer collocation locations and then transporting the customer's traffic to their own switches. Moreover, we find that access to EELs also promotes self-deployment of interoffice transport facilities by competitive LECs because such carriers will eventually self-provision transport facilities to accommodate growing demand. We further agree that the availability of EELs and other UNE combinations promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations.
>
> 587. We decline to require incumbent LECs provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements through a conversion request. Thus, to the extent a competitive LEC enters into a long-term contract to receive discounted special access services, such competitive LEC cannot dissolve the long-term contract based on a future decision to convert the relevant circuits to UNE combinations based on changes in customer usage. We recognize, however, that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable and nondiscriminatory rates, terms, and conditions. Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage.

TRO at ¶576, ¶587

~~Similar to paragraph 587, the TRO/TRRO Attachment Section 6.1 states that "SBC shall provide access to Section 251 UNEs and combinations of Section 251 UNEs without regard to whether a CLEC seeks access to the UNEs to establish a new circuit or to convert an existing circuit from a service to UNEs, provided the rates, terms and conditions under which such Section 251 UNEs are to be provided are included within the CLEC's underlying Agreement".~~

Cbeyond argues that these federal provisions demonstrate that AT&T cannot construct obstacles to UNE facilities regardless of whether the facility is part of an existing EEL circuit or not. The Commission recognizes that federal law provides requirements for AT&T to provide UNEs and that an EEL is a combination of UNEs. The absence of language expressly changing these requirements is fatal to AT&T's position that an EEL is a single UNE. ~~this section of the ICA and the *TRO* require the rearranging of existing EELs. It relies specifically on the term "to convert an existing circuit to UNEs". The Commission does not read it the same way. An existing circuit is a circuit that was a Cbeyond customer being served through special access tariffs and now will keep the same circuit but pay UNE prices. If the parties had intended that to "convert an existing circuit" meant to convert an existing EEL, the ICA would say just that, i.e., to "convert an existing EEL". It does not, which leads us to conclude that Cbeyond is mistaken.~~

Furthermore, in ¶ 587 of the *TRO*, the FCC found that re-connect and disconnection fees in these instances could deter conversion to UNEs or UNE combinations from special access service. The FCC's reasoning was that ILECs are never required to perform a conversion in order to continue serving their own customers because it is only a billing function. ~~That reasoning does not apply here.~~ Cbeyond has offered evidence that concerning the rate element costs for various products under the ICA. AT&T has submitted contradictory evidence concerning the work performed by AT&T in the form of affidavits. As there is a dispute as to the work performed by AT&T for the charges it imposes on AT&T and the appropriate rates elements that should be applied for the work performed, there is a dispute as to a material fact before the Commission. The resolution of this issue is a material fact because the rate elements in the ICA are associated with the TELRIC charges as determined in Docket 02-0864 and are necessary to determine the appropriate product offered in the ICA. Consequently, an evidentiary hearing is required relating to the rate elements associated to the work performed by AT&T for the services Cbeyond requests. ~~The two scenarios at issue here involve more than billing changes and, at the very least, there is work done on the cross connects.~~

~~Cbeyond's reliance on the Commission's *Globalcom Order* is similarly misleading. That proceeding involved the question of whether or not it was permissible for AT&T to charge termination charges and various other requirements when a CLEC switched from special access service to UNE service. That is not the fact situation here.~~

Cbeyond also states that AT&T's policy is in violation of the TRO/TRRO Attachment Section 6.1, which states that "SBC [AT&T] shall not impose any additional conditions or limitations upon obtaining access to EELs or to any other UNE combination other than those set out in this Agreement." ~~There is no allegation that AT&T is imposing any conditions on EELs, rather~~ Cbeyond's argument is that AT&T's process for rearranging EELs ~~results in prices that are too high~~ is not justified by the terms of the ICA and imposes an undue restriction on UNE combinations. AT&T has cited to no provision of the ICA which permits it to couple charges for one UNE (such as a transport) to another UNE (such as a loop). Moreover, AT&T and Staff's reliance on the two step process of disconnecting ~~the~~ an entire DS1/DS1 EEL and connecting either a DS1/DS3 EEL or a standalone loop appears to be merely an *ad hoc* choice – neither Staff nor AT&T adequately explain why the UNE transport disconnection and provisioning in the ICA which succinctly accomplishes what Cbeyond orders from AT&T – is not applied in the circumstances here instead. ~~is the only process contained in the ICA to effectuate what Cbeyond wishes to do.~~ The TRO/TRRO Attachment Section 6.5 and Section 9.1.2 of the original ICA also contain similar prohibitions ~~and do not support Cbeyond's position~~.

AT&T is also alleged to have violated TRO/TRRO Attachment Sections 3.1.4 (DS1 Transport) and 3.1.5 (DS3 Transport), which state that AT&T must provide non-discriminatory access, at Cbeyond's request, to Unbundled Dedicated Transport. Nothing in the ICA nullifies AT&T's duties under federal law with respect to Unbundled Dedicated Transport. Moreover, a determination of whether AT&T's choice to charge Cbeyond to disconnect and provision an entire EEL when Cbeyond only requests the disconnection and provisioning of an UNE transport depends in large measure on the work AT&T performs and is permitted to charge pursuant to Docket 02-0864. As stated, no evidentiary hearing has occurred and the record before the Commission on this point is not complete. ~~The UDT rules and the ICA sections that give contractual effect to them do not apply to EEL rearrangements.~~

Cbeyond further argues that AT&T is illegally attempting to tie the UNE loop to UNE transport and, for the first time in its Reply Brief, Cbeyond cites to FCC rule 51.307 which prohibits illegal tying. This argument is a companion argument to AT&T's duties under the ICA and federal law to permit access to UNE elements. ~~is misleading. There is no allegation in the record that AT&T is not allowing Cbeyond to individually order UNE loops or individually order UNE transport. The problem is that Cbeyond does not want to pay to separate them once it has asked that they be joined.~~

In addition to the pricing terms in the ICA detailed above, Cbeyond also points to ~~Cbeyond claims that the ICA contains a price for disconnecting the transport portion of the EEL. Although on its face this appears to support Cbeyond, a closer reading of the record does not. Cbeyond quotes~~ the rebuttal testimony of AT&T witnesses in ~~Silver from~~ Docket 02-0864 (Attachment G to Cbeyond's Reply Brief) which raises a question as to the pricing elements appropriate under the ICA for the services Cbeyond orders. Cbeyond further claims that the testimony and work papers in Docket 02-0864 demonstrate that AT&T does not perform the work it is charging Cbeyond for the services in dispute in this action, namely the complete disconnection and provision of all UNEs in an EEL when Cbeyond merely requests that a UNE transport be disconnected and provisioned. AT&T provides only limited rebuttal on this point. In addition, Cbeyond complains that AT&T misapplies the Clear Channel Capability rate element ("CCC" rate). Specifically, Cbeyond argues that the CCC rate should only apply when CCC is ordered after a loop is already installed and points to the testimony of AT&T's own witness from ICC Docket No. 02-0864 which established the rate element. Staff and AT&T disagrees with Cbeyond argument but again the evidentiary record before the Commission is incomplete. ~~, where he states "when UDT is used as a component of an EEL in combination with an unbundled loop, some of the nonrecurring costs incurred when provisioning UDT on a stand-alone basis will not apply. It is that recognition that led SBC Illinois to determine a separate cost for UDT when it is used as a component of the EEL." Cbeyond R.B at 16. This quote supports the proposition that UDT costs are lower when part of an EEL than for stand-alone UDT. This quote does not support Cbeyond's position that it may merely cancel the UDT portion of the EEL. Indeed, what this quote suggests to the Commission is that Cbeyond wants the lower costs of provisioning a DS1/DS1 EEL, but does not want to accept the rest of the ICA terms that apply to the DS1/DS1 EEL. It appears as though Cbeyond is attempting to re-litigate an issue it lost in Docket 02-0864.~~

Based on the record, the Commission finds that an evidentiary hearing is required in this action. Cbeyond's Complaint survived AT&T's Motion To Dismiss. However the Commission has an insufficient evidentiary record before it to resolve the Complaint. Moreover, there are

numerous issues of disputed material fact yet to be resolved. To narrow the question on remand and as a matter of law, the Commission finds that EELs are not single UNEs, but are two or more UNEs which AT&T must provide separately or in combination under the terms of the ICA and federal law. On remand, the Commission directs the parties to examine which terms and rates in the ICA agreement control disconnection and provisioning of UNE transports in an EEL. In addition, the Commission directs the parties to provide additional information on Cbeyond's complaint that AT&T misapplies the CCC rate element.

~~The First Amendment to the ICA contains the prices the parties have agreed to and Cbeyond is correct that in the charges for a DS1/DS1 EEL there is a separate line item for disconnecting the UDT portion of the loop. Cbeyond would like to pick and choose what charges it will pay. For instance, if Cbeyond orders a loop, there are lots of NRCs that go along with that order, including several for when it disconnects the loop. It cannot choose to pay the provisioning disconnection charge, but not the service order disconnection charge that goes along with disconnecting the loop. Similarly if it wants to disconnect an EEL, it cannot just pay some of the disconnection charges as it wants to here.~~

~~For all these reasons, Cbeyond has not shown that AT&T has violated the Interconnection Agreement and, thus, Cbeyond's complaint is denied. We note, however, that although Cbeyond's complaint is denied, it is not left without a course of action. Cbeyond and AT&T are currently operating under an ICA that expired in February of 2010. Apparently Cbeyond has been "rearranging" EELs since 2006, but has not yet attempted to negotiate a new ICA that would contain rates specific to "rearrangements." It is baffling to the Commission why Cbeyond has not sought to amend its contract.~~

~~Cbeyond is free to commence negotiations with AT&T on a new ICA. During such negotiations Cbeyond could request that the rearrangement service and related rates be included in the new ICA. If it cannot negotiate such an agreement with AT&T, Cbeyond could seek arbitration before the Commission to include the rearrangement service and rates.~~

~~This may address Cbeyond's issues in the future, but Cbeyond has not shown that AT&T has acted improperly in the past with respect to the charges at issue here. Indeed, because the parties have a signed, Commission-approved interconnection agreement that contains rates and processes to effectuate the rearrangements requested by Cbeyond, it is not appropriate for the Commission to rewrite the ICA to incorporate new rates.~~

~~Cbeyond cites various federal regulations (47 C.F.R §51.507(e)), ICA sections (ICA Section 9.1.1) and section 251 of TA96 that it believes supports its position that the rates AT&T charges for the two-step process are improper and not TELRIC compliant. If Cbeyond decides to pursue either an arbitration or a generic proceeding, then the Commission would look at what work AT&T is performing and determine what rates should apply for "rearrangements".~~

~~Although an investigation into the proper rates for rearrangements is not proper here, it bears noting that the Joint Stipulation is contrary to Cbeyond's position that no work is performed on the loop for rearrangements. The charts contained in the Stipulation show that the loop ends at the DSX-1 Jack Panel. The connection from the MDF to the DSX-1 Jack Panel is altered in both scenarios at issue here. Accordingly, the Joint Stipulation supports AT&T's statements that work must be done to complete the rearrangements requested by Cbeyond. Staff's thorough brief clearly explains the steps involved.~~

~~Because Cbeyond argues that this is not a billing dispute, it believes that it does not need to show the incorrect bills. The Commission is left to wonder then, had it found in Cbeyond's favor, on what basis the Commission could order relief. A ruling, like that requested by Cbeyond ("order AT&T to credit Cbeyond for all inappropriate charges imposed since inception"), would undoubtedly lead to further disputes.~~

~~Also Staff asserts that the billing records attached to the Complaint do not show that AT&T has billed Cbeyond according to the two-step process, but this is not a question before the Commission either. Cbeyond, the Complainant, has not made such an assertion, let alone proven it, and, therefore, it is not properly before the Commission.~~

~~Because Cbeyond's Complaint is denied in its entirety, Cbeyond is directed to pay the Commission's costs.~~

X. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Cbeyond Communications, LLP is a Delaware-based Limited Liability Corporation with its headquarters in Georgia and is a certificated telecommunications service provider in Illinois;

(2) Illinois Bell Telephone Company d/b/a AT&T Illinois is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;

(3) the Commission has jurisdiction over Illinois Bell Telephone Company, Cbeyond Communications, LLP and the subject matter of this proceeding;

(4) under the terms of the ICA and federal law, EELs are a combination UNEs and are not independent UNEs ~~the parties interconnection agreement does not contain rates specific to the rearrangement of EELs and under the interconnection agreement, the only way to effectuate a rearrangement is by first cancelling the DS1/DS1 EEL and then ordering either the DS1/DS3 EEL or a stand-alone loop~~;

(5) the evidentiary record before the Commission is insufficient to resolve the questions presented in the Complaint; ~~Cbeyond Communications, LLP has not shown that Illinois Bell Telephone Company has violated state law, federal law or the parties interconnection agreement;~~

(6) the parties are to examine which terms and rates in the ICA agreement control disconnection and provisioning of UNE transports in an EEL; and

(7) the parties are to provide additional information on Cbeyond's complaint that AT&T misapplies the CCC rate element.

~~(8) for the reasons stated in findings (4) and (5), Cbeyond Communications, LLP's Complaint is denied;~~

~~(9) Cbeyond is directed to pay the Commission's costs pursuant to Section 13-515(g) of the Public Utilities Act.~~

IT IS THEREFORE ORDERED that the action is hereby remanded for a full evidentiary hearing as to the matters presented in the Complaint filed by Cbeyond Communications, LLP against Illinois Bell Telephone Company d/b/a AT&T Illinois on March 9, 2010~~, is hereby denied. IT IS FURTHER ORDERED that, pursuant to Section 13-515(g) of the Public Utilities Act, Cbeyond Communications, LLP is directed to pay the Commission's costs of this proceeding.~~

~~IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.~~

~~DATED: March 15, 2011~~
~~BRIEFS ON EXCEPTIONS DUE: March 29, 2011~~
~~REPLY BRIEFS ON EXCEPTIONS DUE: April 5, 2011~~

~~Leslie Haynes,~~
~~Administrative Law Judge~~